

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

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| IN THE MATTER OF | § | PETITION FOR OBJECTION |
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| Clean Air Act Title V Permit (Federal Operating Permit) No. O2942 | § | |
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| Issued to the Oak Grove Management Company | § | Permit No. O2942 |
| | § | |
| Issued by the Texas Commission on Environmental Quality | § | |
| | § | |

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO THE
ISSUANCE OF PROPOSED TITLE V OPERATING PERMIT NO. O2942 FOR THE
OAK GROVE STEAM ELECTRIC STATION**

Pursuant to section 42 U.S.C. § 7661d(b)(2), Environmental Integrity Project and Sierra Club (“Petitioners”) hereby petition the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) to object to Federal Operating Permit No. O2942 (“Proposed Permit”) issued by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) for the Oak Grove Steam Electric Station, operated by the Oak Grove Management Company in Robertson County, Texas.

I. PETITIONERS

The Environmental Integrity Project is a non-profit, non-partisan watchdog organization that advocates for effective enforcement of environmental laws. EIP has three goals: (1) to illustrate through objective facts and figures how the failure to enforce and implement environmental laws increases pollution and harms public health; (2) to hold federal and state agencies as well as individual corporations accountable for failing to enforce or comply with environmental laws; and (3) to help local communities obtain protections guaranteed by

environmental laws. The Environmental Integrity Project has offices and programs in Austin, Texas and Washington, D.C.

The Sierra Club is a national nonprofit organization with 67 chapters and over 635,000 members dedicated to exploring, enjoying, and protecting the wild places of earth; to practicing and promoting the responsible use of earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Lone Star Chapter of the Sierra Club has members who live, work, and recreate in areas affected by air pollution from Oak Grove Steam Electric Station.

II. PROCEDURAL BACKGROUND

This petition addresses the TCEQ's initial issuance of Title V Permit No. O2942. Oak Grove filed its permit application on March 23, 2007. The Executive Director completed his technical review of Oak Grove's application on July 11, 2016. Notice of the Draft Permit was published on August 3, 2016 and the public comment period for the Draft Permit ended on September 4, 2016. Environmental Integrity Project and Sierra Club timely-filed public comments on the Draft Permit on September 1, 2016. (Exhibit 1), Public Comments Regarding Draft Title V Permit No O2942 ("Public Comments"). On April 7, 2017, the TCEQ's Executive Director issued his response to public comments and provided notice of the Proposed Permit. (Exhibit 2), Notice of Proposed Permit and Executive Director's Response to Public Comment on Permit No. O2942 ("Response to Comments"); (Exhibit 3), Proposed Permit No. O2942 ("Proposed Permit"); (Exhibit 4), Statement of Basis for Permit No. O2942.

The Executive Director forwarded the Proposed Permit and his Response to Comments to EPA for review. EPA's 45-day review period ran from April 11, 2017 until May 26, 2017. EPA

did not object to the Proposed Permit. Because EPA failed to object to the Proposed Permit during its 45-day review period, members of the public have 60-days from the end of EPA's review period to petition EPA to object to the Proposed Permit. This petition is timely-filed and requests that the Administrator object to the Proposed Permit.

III. LEGAL REQUIREMENTS

Title V permits are the primary method for enforcing the Clean Air Act's pollution control requirements for major sources. *Operating Permit Program*, 57 Fed. Reg. 32,250, 32,258 (July 21, 1992). Prior to enactment of Title V, regulators, operators, and members of the public often had difficulty determining which requirements applied to each major source and whether sources were complying with applicable requirements. This was a problem because the applicable requirements were spread across many different rules and orders, some of which did not make it clear how general requirements applied to specific sources.

The Title V permitting program was created to resolve this problem by requiring each major source of air pollution to obtain an operating permit that lists each applicable federally-enforceable requirement, contains enough information for readers to determine how applicable requirements apply to units at the permitted source, and establishes monitoring requirements that are sufficient to assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); *Virginia v. Browner*, 80 F.3d 869, 873 (4th Cir. 1996) ("The permit is crucial to implementation of the Act: it contains, in a single, comprehensive set of documents, all CAA requirements relevant to the particular source"); *Sierra Club v. EPA*, 536 F.3d 673, 674-75 (D.C. Cir. 2008) ("But Title V did more than require the compilation in a single document of existing applicable emission limits It also mandated that each permit . . . shall set forth monitoring requirements to assure compliance with the permit terms and conditions").

Because federal courts are often unwilling to enforce otherwise applicable requirements that have been improperly omitted from a Title V permit, state-permitting agencies and EPA must ensure that Title V permits accurately and clearly explain what each major source must do to comply with the law. *See, e.g., Sierra Club v. Otter Tail*, 615 F.3d 1008 (8th Cir. 2008) (holding that Sierra Club could not enforce New Source Performance Standard requirements that had been omitted from the Defendant’s Title V permit).

EPA must object to a state issued Title V permit if it fails to include and assure compliance with all applicable requirements. 40 C.F.R. § 70.8(c). If EPA does not object to a Title V permit, “any person may petition the Administrator within 60 days after the expiration of the Administrator’s 45-day review period to make such objection.” 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360. The Administrator “shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the . . . [Clean Air Act].” 42 U.S.C. § 7661d(b)(2); *see also*, 40 C.F.R. § 70.8(c)(1). The Administrator must grant or deny a petition to object within 60 days of its filing. 42 U.S.C. § 7661d(b)(2).

IV. GROUNDS FOR OBJECTION

A. The Proposed Permit Omits Enforceable Requirements in Oak Grove’s Written Maintenance, Startup, and Shutdown Plan

1. Specific Grounds for Objection, Including Citation to Permit Term

The Proposed Permit is deficient because it fails to include federally-enforceable requirements in Oak Grove’s written Maintenance, Startup, and Shutdown Plan (“MSS Plan”). Oak Grove’s PSD Permit requires Oak Grove to develop and adhere to such a plan to minimize

emissions during planned MSS activities authorized by the PSD Permit. Permit No. 76474/PSDTX1056 (“PSD Permit”), Special Condition No. 16. This Special Condition states:

The holder of this permit shall operate the PC boilers and associated air pollution control equipment in accordance with good air pollution control practice to minimize emissions during MSS, by operating in accordance with a written MSS plan. The plan shall include detailed procedures for review of relevant operating parameters of the PC boiler and associated air pollution control equipment during MSS to make adjustments and corrections to reduce or eliminate any excess emissions. The plan shall also address readily foreseeable startup scenarios, including hot startups, when the operation of the boiler is only temporarily interrupted, and provide for appropriate review of the operational condition of the boiler before initiating startup. In addition, the plan shall address procedures for minimizing opacity and PM emissions while conducting on-line maintenance of the PC boiler or its control equipment.

While Oak Grove’s PSD Permit is attached to the Proposed Permit, the MSS Plan is not. Because the MSS Plan is an enforceable requirement of a major NSR permit, the operating requirements and emission limits it contains must be listed on the face of the Proposed Permit (or included as an attachment) and may not be incorporated by reference into the Proposed Permit. *In the Matter of Premcor Refining Group*, Order on Petition No. VI-2007-02 (May 28, 2009) at 5-6 (objecting to Texas’s use of IBR for major NSR permit requirements, EPA clarified that its “decision approving . . . use of IBR in Texas’ program was limited to, and specific to, *minor NSR permits and Permits by Rule* in Texas.”) (emphasis added).

2. Applicable Requirement or Part 70 Requirement Not Met

Title V permits must include and assure compliance with PSD permit requirements, including Best Available Control Technology (“BACT”) requirements. 42 U.S.C. § 7661c(a); 40 C.F.R. §§ 70.2, 70.6(a)(1); *In the Matter of Southwestern Electric Power Company, H.W. Pirkey Power Plant*, Order on Petition No. VI-2014-01 (February 3, 2016) at 8 (“Whether they are primary or alternative limits, the BACT limits in a PSD permit are applicable requirements and, therefore, must be accounted for in a Title V permit.”).

3. Inadequacy of the Permit Term

Enforceable provisions in Oak Grove’s MSS Plan are part of the BACT control strategy for the Oak Grove Power Plant. (Exhibit 1-A), Technical Review Document, Permit No. 76474 at 6 (explaining that the MSS Plan is part of Oak Grove’s BACT controls). Because the MSS Plan is a BACT requirement established by Oak Grove’s PSD Permit, it must be included in the Proposed Permit. 40 C.F.R. § 70.6(a)(1); *In the Matter of WE Energies Oak Creek Power Plant* (“Oak Creek Order”), Order Objecting to Permit No. 241007690-P10 at 25 (June 12, 2009) (objecting to permit that failed to include requirements established by an enforceable startup/shutdown plan).

While EPA has, as a matter of policy, allowed the TCEQ to incorporate requirements in *minor* NSR permits into Title V permits by reference, EPA has also been clear that major NSR permit requirements—including PSD permit requirements—may not be incorporated by reference into Texas Title V permits. *See, e.g., In the Matter of Premcor Refining Group*, Response to Petition No. VI-2007-02 at 6 (May 28, 2009). Enforceable requirements in Oak Grove’s MSS Plan are *major NSR* requirements. Thus, these requirements must be directly included on the face of or as an attachment to the Proposed Permit.

4. Issue Raised in Public Comments

Petitioners raised this issue on pages 7-8 of their Public Comments.

5. Analysis of State’s Response

The Executive Director provides three responses to Petitioners’ demonstration that the Proposed Permit is deficient because it omits major NSR requirements in Oak Grove’s MSS Plan: (1) this issue is beyond the scope of the Title V permit review process; (2) Title V program rules do not compel the TCEQ to include requirements in Oak Grove’s MSS Plan in the Proposed

Permit; and (3) other provisions in Oak Grove's PSD permit, which are attached to the Proposed Permit, are sufficient to assure compliance with planned MSS requirements established by the permit. These responses do not rebut Petitioners' demonstration.

a. The Proposed Permit's Failure to Include Requirements in Oak Grove's MSS Plan is Not "Beyond the Scope of this Title V Review Process"

The Executive Director's Response to Comments states:

The ED disagrees with the commenter's assertion that the draft permit must be revised to include Applicant's written MSS plan. Permit No. 76474/PSDTX1056 was amended in 2011 to incorporate MSS related conditions and emissions in accordance with [the] approved Texas SIP. The Draft Permit incorporates by reference Permit No. 76474/PSDTX1056 issued 3/12/2015. The ED notes that Permit No. 76474/PSDTX1056 issued 03/12/2015 does not change, update or revise MSS conditions or emissions; therefore, comments concerning MSS conditions from the MSS amendment project approved in 2011 are beyond the scope of this Title V review process.

Response to Comments at 14.

This portion of the Executive Director's response to comments mischaracterizes Petitioners' demonstration. Petitioners have not, as the Executive Director suggests, taken issue with "MSS conditions from the MSS amendment project approved in 2011." Instead, Petitioners have demonstrated that federally-enforceable requirements established through the PSD permitting process have been omitted from the Proposed Permit. The Proposed Permit's failure to include federally-enforceable major source requirements in Oak Grove's initial Title V permit is squarely a Title V issue. 40 C.F.R. § 70.6(a)(1); *Oak Creek Order* at 25. Accordingly, the Executive Director's contention that this issue is beyond the scope of the review process for Oak Grove's initial Title V permit is mistaken.

b. The Proposed Permit's Failure to Include Requirements in Oak Grove's MSS Plan Violates Title V Requirements

While the Executive Director concedes that Oak Grove's PSD Permit requires the company to "operate in accordance with a written startup and shutdown plan," Response to Comments at 14, he also contends that "nothing in Texas' approved SIP or federal regulations require that the MSS [P]lan be made a part of the NSR or the Draft Permit." *Id.* The Executive Director's claim is incorrect. The Clean Air Act and EPA's regulations require each Title V permit to include and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c).

Nonetheless, the Executive Director contends that Texas's scheduled maintenance, startup, and shutdown reporting and recordkeeping rule at 30 Tex. Admin. Code § 101.211(e) only requires an operator to "submit a technical plan for any scheduled maintenance, startup, or shutdown activity *when requested by the executive director* with a copy to the appropriate local air pollution agencies with jurisdiction." *Id.* (emphasis in original). The relevance of this rule is not obvious and it is not explained by the Executive Director. Whatever § 101.211(e) may or may not require, Oak Grove's PSD Permit identifies the MSS Plan as a BACT requirement. (Exhibit 1-A), Technical Review Document Permit No. 76474 at 6 (explaining that Oak Grove's written MSS Plan is a part of the source's BACT controls). Because compliance with the MSS Plan is required by Oak Grove's PSD Permit, the MSS Plan is an applicable requirement and must be included in the Proposed Permit. 40 C.F.R. § 70.6(a)(1); *Oak Creek Order* at 25.

While EPA has, as a matter of policy, allowed the TCEQ to incorporate requirements in *minor* NSR permits into Title V permits by reference, incorporation by reference is not an appropriate method for including *major* NSR permit requirements (including PSD permit requirements) in Title V permits. *In the Matter of Premcor Refining Group*, Response to Petition

No. VI-2007-02 at 6 (May 28, 2009). Enforceable requirements in Oak Grove's MSS Plan are *major NSR* requirements. Thus, they must be included on the face of or as an attachment to the Proposed Permit.

c. The MSS Plan Must Be Included in the Proposed Permit, Even if Oak Grove's PSD Permit Contains Other Monitoring, Recordkeeping, and Reporting Requirements

The Executive Director contends that Oak Grove's MSS Plan need not be included in the Proposed Permit because

[a]ll relevant monitoring/testing, recordkeeping and reporting requirements to assure compliance and enforceability when OGSES site is operating under MSS conditions are already explicitly stated in Permit No. 76474/PSDTX1056, Special Conditions 15 through 20, Attachments B and C. Additional requirements relating to reporting and recordkeeping for scheduled MSS are also listed in the Proposed Permit at page 2, special terms and conditions 2.G.

Response to Comments at 15.

The Executive's Director's argument does not address Petitioners' demonstration. Petitioners have shown that the Proposed Permit is deficient because it omits enforceable requirements in Oak Grove's MSS Plan. Oak Grove's MSS Plan "include[s] detailed procedures for review of relevant operating parameters of the PC boiler and associated air pollution control equipment during MSS to make adjustments and corrections to reduce or eliminate any excess emissions." PSD Permit, Special Condition No. 16. In addition, "the plan . . . address[es] procedures for minimizing opacity and PM emissions while conducting on-line maintenance of the PC boiler or its control equipment." *Id.* These procedures are federally-enforceable requirements of Oak Grove's PSD Permit and must be included on the face of the Proposed Permit. 40 C.F.R. § 70.6(a)(1); *Oak Creek Order* at 25. The fact that special conditions in Oak Grove's PSD Permit establish monitoring, recordkeeping, and reporting requirements has no bearing on

the Executive Director’s obligation to include all applicable federally-enforceable PSD requirements on the face of the Proposed Permit.

B. The Proposed Permit Omits Limits and Representations in Oak Grove’s Certified Permit by Rule Registrations, which are Applicable Requirements

1. Specific Grounds for Objection, Including Citation to Permit Term

Texas’s rule at 30 Tex. Admin. Code § 106.6 allows operators to certify emission rates for Permit by Rule (“PBR”) projects that are more stringent than generic limits established by the general PBR rule at 30 Tex. Admin. Code § 106.4. Certified PBR emission rates and representations are federally enforceable requirements. 30 Tex. Admin. Code § 106.6(a) (“An owner or operator may certify and register the maximum emission rates from facilities permitted by rule . . . in order to establish federally-enforceable emission rates which are below the limitation in § 106.4 of this title[.]”). Oak Grove has certified the following federally enforceable PBR emission limits for units at the Oak Grove Power Plant:

| EPN/Source | PM | | PM ₁₀ | | PM _{2.5} | |
|--|-------|------|------------------|------|-------------------|------|
| | lb/hr | Tpy | lb/hr | tpy | lb/hr | tpy |
| E-OGLMSF: Limestone Maintenance Storage | 1.65 | 2.41 | 0.58 | 0.84 | 0.09 | 0.13 |

(Exhibit 1-B), PBR Registration No. 106925 (February 21, 2013).

| Emission Point Number (EPN) | Emissions Source Description | Pile Area (acres) | Emission Factor (lb/acre-day) | Annual Operating Hours (hr/yr) | Control Efficiency (%) | PM Emission Rates | | PM ₁₀ Emission Rates | | PM _{2.5} Emission Rates | |
|-----------------------------|---|-------------------|-------------------------------|--------------------------------|------------------------|-------------------|------------------|---------------------------------|------------------|----------------------------------|------------------|
| | | | | | | Hourly (lb/hr) | Annual (tons/yr) | Hourly (lb/hr) | Annual (tons/yr) | Hourly (lb/hr) | Annual (tons/yr) |
| E-OGLDLF & E-OGRDLF | Local and Remote Landfill Areas - Usable Gypsum Reclaim Fugitives | 2.4 | 13.2 | 8,760 | 50 | 0.66 | 2.89 | 0.31 | 1.37 | 0.05 | 0.21 |

(Exhibit 5), PBR Registration No. 142258 (January 13, 2017)

The Proposed Permit does not contain any condition or table that identifies Oak Grove's certified PBR registrations as applicable requirements.

2. Applicable Requirement or Part 70 Requirement Not Met

Title V permits must include and assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c). "Applicable requirements" include requirements in certified PBR registrations. 30 Tex. Admin. Code § 122.10(2)(H).

3. Inadequacy of the Permit Term

While the Proposed Permit incorporates by reference TCEQ's general PBR rules and identifies various PBRs claimed by Oak Grove, it does not indicate that Oak Grove has certified emission rates lower than those allowed by Texas's PBR rules, identify the applicable source-specific emission limits established by these certified PBR registrations, explain which units are subject to source-specific certified PBR limits, or specify how compliance with the limits should be determined. Because the Proposed Permit and Statement of Basis fail to indicate that Oak Grove is subject to source-specific emission limits established through the PBR certification process or even explain what a certified PBR registration is, the Proposed Permit fails to identify and assure compliance with all applicable requirements.

4. Issue Raised in Public Comments

Petitioners raised this issue on pages 8-9 of their Public Comments. While Commenters identified PBR Registration No. 106925 as an applicable requirement improperly omitted from the Draft Permit, they did not identify PBR Registration No. 142258 as an omitted applicable requirement. Petitioners, however, may still raise this registration's omission from the Proposed Permit as a basis for objection, because the registration was not issued until after the close of the Draft Permit public comment period. 42 U.S.C. § 7661d(b)(2) ("The petition shall be based only

on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (*unless the petitioner demonstrates in the petition . . . that it was impracticable to raise such objections within such period or unless the ground for such objection arose after such period*) (emphasis added).

5. Analysis of the State's Response

The Petitioners' demonstration for this issue is simple: The Proposed Permit is deficient because it does not identify and incorporate source-specific emission limits and representations in Oak Grove's certified PBR registrations as applicable requirements. The Executive Director's response to comments on this issue is long and complicated, and contains very little that actually addresses Petitioners' simple argument.

The Executive Director begins by attacking a claim that Petitioners did not make: that Oak Grove's certified PBR registrations are "not federally enforceable." Response to Comments at 16. Petitioners agree that Oak Grove's certified PBR registrations are federally enforceable. *See*, Public Comments at 8. It is because emission limits and representations in Oak Grove's certified PBR registrations *are* federally enforceable applicable requirements that the Proposed Permit's omission of such requirements violates Title V of the Clean Air Act. Thus, while the Executive Director is correct that emission limits and representations in Oak Grove's certified PBR registrations are federally enforceable, that fact cuts against rather than supports the TCEQ's position that it is unnecessary to list these requirements in the Proposed Permit. Each Title V permit must include and assure compliance with all federally enforceable applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(a) and (c).

Next, the Executive Director contends that this issue is beyond the scope of this Title V permitting project:

The Draft Permit incorporates by reference Permit No. 76474/PSDTX1056 issued 03/12/2015. The ED notes that Permit No. 76474/PSDTX1056 issued 03/12/2015 does not change, update or revise the PBR registration 2016925 approved in 2013; therefore, comments concerning this unit approved in 2013 are beyond the scope of this Title V review process.

Response to Comments at 16.

The Executive Director, however, does not explain why the issuance of Oak Grove's PSD Permit in 2015 has any bearing on Petitioners' argument that the Proposed Permit must identify and incorporate federally enforceable emission limits in Oak Grove's separately-issued certified PBR registrations as applicable requirements. The date of issuance for Oak Grove's PSD Permit clearly does not absolve the Executive Director of his obligation to include all applicable requirements in the Proposed Permit. 42 U.S.C. § 7661c(a) and (c).

Next, the Executive Director contends that Oak Grove's submission of a form certifying emission rates lower than the general requirements in PBRs claimed by the company assures federal enforceability of the certified limits:

As acknowledged by the commenter, EPN E-OGLMSF was authorized under the PBR in § 106.261 in accordance with approved Texas SIP and PBR in § 106.261 is listed in the Proposed Permit at page 71. The registered PBR in § 106.261(a)(2) limits emissions to not exceed 6 lb/hr and 10 tpy and § 106.261(a)(5) prohibits visible emissions, except uncombined water, will not be emitted to the atmosphere from any point or fugitive source in amounts >5.0% opacity in any six-minute period. The Applicant submitted a PI-7-CERT form within 10 days of installation to certify emission rates and all source of air contaminants on the Applicant's property covered by registration 106925. This assures federal enforceability of units authorized under PBR in § 106.261.

Response to Comments at 16.

This purpose of this response is also hard to understand. As the Executive Director explains, Oak Grove's certified PBR registrations are federally enforceable requirements. All

federally enforceable applicable requirements must be contained in the Proposed Permit. 42 U.S.C. § 7661c(a) and (c). The citation to PBR rule § 106.261 does not suffice to include and assure compliance with requirements in Oak Grove’s certified PBR registrations, because the limits in that rule and the TCEQ’s general PBR rule at § 106.4 are less stringent than the limits established by Oak Grove’s certified PBR registrations.¹ Accordingly, the Proposed Permit is deficient.

The Executive Director concludes his response on this issue with a lengthy and irrelevant discussion of the TCEQ’s policy for consolidating PBR authorizations into NSR permits and the Proposed Permit’s recordkeeping and reporting requirements for incorporated PBRs. Response to Comments at 16-17. This discussion has no bearing on Petitioners’ demonstration that the Proposed Permit is deficient because it fails to incorporate emission limits and representations in Oak Grove’s certified PBR registrations as federally enforceable applicable requirements.

C. The Proposed Permit Fails to Assure Compliance with Emission Limits and Operating Requirements Established by Oak Grove’s New Source Review Permits, Including Permits by Rule

1. Specific Grounds for Objection, Including Citation to Permit Term

The Proposed Permit is deficient because it fails to establish monitoring, reporting, and recordkeeping requirements that assure ongoing compliance with emission limits in Oak Grove’s NSR permits, including PBRs, that it incorporates by reference and because the permit record does not contain a reasoned explanation supporting the Executive Director’s determination that monitoring provisions in the Proposed Permit assure compliance with these requirements.

¹ PBR Registration No. 106925 authorizes Oak Grove to emit 2.41 tons of particulate matter each year. PBR Registration No. 142258 establishes a particulate matter limit of 2.89 tons per year. These limits are much lower than the 25 ton per year limit established by 30 Tex. Admin. Code § 106.4(a)(1)(B).

Proposed Permit, Special Condition No. 11 provides that NSR permits (including PBRs) listed in the Proposed Permit's New Source Review Authorization References attachment are incorporated by reference into the Proposed Permit as applicable requirements.

Proposed Permit, New Source Authorization References table incorporates Oak Grove's Chapter 116 permits by reference, including: PSDTX1056 and 76474. Proposed Permit at 83. These two different permit numbers identify a single permit, Oak Grove's PSD Permit, which is attached to the Proposed Permit in Appendix B. The Proposed Permit also includes a "Major NSR Summary Table" that identifies emission limits in the Maximum Allowable Emission Rate Table ("MAERT") for Oak Grove's PSD Permit and lists special conditions in the incorporated permits that establish monitoring, testing, recordkeeping, and reporting requirements that the Executive Director contends assure ongoing compliance with the emission limits. *Id.* at Appendix B.

The Proposed Permit's New Source Review Authorization References table lists 14 Chapter 106 PBR rules that Oak Grove has claimed to authorize projects and emissions at the Oak Grove Power Plant. *Id.* at 83. The Proposed Permit includes the following recordkeeping requirement for emission units authorized by PBR:

The permit holder shall maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. The records shall yield reliable data from the relevant time period that are representative of the emission unit's compliance with the PBR or Standard Permit. These records may include, but are not limited to, production capacity and throughput, hours of operation, safety data sheets (SDS), chemical composition of raw materials, speciation of air contaminant data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring (CEMS, COMS, or PEMS), or control device parametric monitoring. These records shall be made readily accessible and available as required by 30 TAC § 122.144. Any monitoring or recordkeeping data indicating noncompliance with the PBR or Standard Permit shall be considered and reported as a deviation according to 30 TAC § 122.145 (Reporting Terms and Conditions).

Proposed Permit at Special Condition No. 13.

The Statement of Basis provides the following statement regarding the sufficiency of monitoring in the Proposed Permit:

Federal and state rules, 40 CFR § 70.6(a)(3)(i)(B) and 30 TAC § 122.142(c) respectively, require that each federal operating permit include additional monitoring for applicable requirements that lack periodic or instrumental monitoring (which may include recordkeeping that serves as monitoring) that yields reliable data from a relevant time period that are representative of the emission unit's compliance with the applicable emission limitation or standard. Furthermore, the federal operating permit must include compliance assurance monitoring (CAM) requirements for emission sources that meet the applicability criteria of 40 CFR Part 64 in accordance with 40 CFR § 70.6(a)(3)(i)(A) and 30 TAC § 122.604(b).

With the exception of any emission units listed in the Periodic Monitoring or CAM Summaries in the FOP, the TCEQ Executive Director has determined that the permit contains sufficient monitoring, testing, recordkeeping, and reporting requirements that assure compliance with the applicable requirements. If applicable, each emission unit that requires additional monitoring in the form of periodic monitoring or CAM is described in further detail under the Rationale for CAM/PM Methods Selected section following this paragraph.

Statement of Basis at 24.

None of the Periodic Monitoring or CAM Summaries in the Proposed Permit address requirements in Oak Grove's PSD Permit or PBRs, and the Statement of Basis does not provide a reasoned justification for the Executive Director's determination that existing provisions in Oak Grove's PSD Permit and PBRs assure compliance with applicable permit limits and operating requirements.

2. Applicable Requirement or Part 70 Requirement Not Met

Each Title V permit must contain monitoring, recordkeeping, and reporting conditions that assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. §

70.6(a)(3) and (c)(1); *In the Matter of Wheelabrator Baltimore, L.P.* (“Wheelabrator Order”), Permit No. 24-510-01886 at 10 (April 14, 2010). Emission limits in PSD permits and PBRs incorporated by reference into the Proposed Permit are applicable requirements. 40 C.F.R. § 70.2. The rationale for the selected monitoring requirements must be clear and documented in the permit record. 40 C.F.R. § 70.7(a)(5); *In the Matter of United States Steel, Granite City Works* (“Granite City I Order”), Order on Petition No. V-2009-03 at 7-8 (January 31, 2011).

As explained below, the Proposed Permit is deficient because (1) it fails to specify monitoring methods that assure compliance with emission limits and operating requirements in Oak Grove’s PSD Permit and PBRs; and (2) the permit record does not contain a reasoned justification for the Executive Director’s determination that monitoring methods included in the Proposed Permit assure compliance with emission limits in Oak Grove’s PSD Permit and PBRs.

3. Inadequacy of the Permit Term

a. Permits by Rule

Neither the Proposed Permit nor the PBR rules listed in the Proposed Permit’s New Source Review Authorization References table specify monitoring methods that assure compliance with applicable PBR emission limits. For example, Oak Grove claims the PBR at 106.472 (9/4/2000) to authorize emissions from six tanks and loading facilities.² Proposed Permit at 84-88. This PBR contains nothing more than a list of chemicals that may be stored in units under the rule. 30 Tex. Admin. Code § 106.472. While the Proposed Permit does identify the TCEQ’s PBR general requirements at 30 Tex. Admin. Code Chapter 106, Subchapter A as applicable requirements and includes Special Condition Nos. 12 and 13, which are related to PBR recordkeeping, these provisions do not specify which monitoring methods—*if any*—are necessary to assure compliance

² For a discussion of requirements in other PBRs claimed by Oak Grove, *see* Public Comments at 10-11.

with applicable PBR requirements. Rather, these provisions provide a non-exhaustive menu of options that Oak Grove may pick and choose from at its discretion to demonstrate compliance. This broad, non-exhaustive list does not assure compliance with PBR requirements. In fact, the laundry list of options for monitoring compliance with PBR requirements is so vague that it is virtually meaningless.

The Proposed Permit allows Oak Grove to determine which records and monitoring provide sufficiently “reliable data” effectively outsourcing the Executive Director’s obligation to specify the monitoring method(s) that will assure compliance with each emission limit or standard established by PBRs incorporated by reference into the Proposed Permit. This vagueness also prevents EPA and the public from effectively evaluating whether the monitoring methods Oak Grove actually uses to determine compliance with PBR requirements are consistent with Title V. For example, Petitioners would likely review and/or challenge monitoring relying upon undefined “engineering calculations” to determine compliance, unless the permit record contained information showing that such calculations assure compliance with applicable emission limits.

Neither the Proposed Permit, nor the accompanying Statement of Basis provide support for the Executive Director’s determination that the Proposed Permit specifies monitoring methods that assure compliance with PBR requirements. Because this is so, the Proposed Permit is deficient. *Wheelabrator Order* at 10.

b. The Proposed Permit Fails to Assure Compliance with Requirements in Oak Grove’s PSD Permit

Title V permits must include “compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and condition of the permits.” 40 C.F.R. § 70.6(c)(1); *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008). The

Proposed Permit is deficient because it fails to establish monitoring and reporting requirements sufficient to assure compliance with terms and conditions of Oak Grove's PSD Permit.

(i) *The Proposed Permit Fails to Assure Compliance with the Opacity Limit Established by Oak Grove's PSD Permit*

PSD Permit, Special Condition No. 10 establishes the following limit on the opacity of emissions from Oak Grove's main boilers:

Opacity of emissions from EPNs E-OGU1 and E-OGU2 must not exceed 10 percent averaged over a six-minute period, except for those periods described in Title 30 Texas Administrative Code § 111.111(a)(1)(E), 40 C.F.R. § 60.11(c), or otherwise allowed by law.

PSD Permit, Special Condition No. 35 explains that compliance with this opacity limit will be established so long as Oak Grove demonstrates compliance with the filterable PM emission limit in the permit's MAERT using PM CEMS. Footnote 5 to the permit's MAERT provides that "[c]ompliance with the hourly [filterable PM] emission limit is based on a three-hour block average of the CEMS data." Compliance with the MAERT's three-hour average filterable PM limit does not assure compliance with the opacity limit in Special Condition No. 10, because the opacity limit's six-minute averaging period is much shorter and significant variation in the amount of PM emitted during any three-hour block may mask violations of the six-minute opacity limit.

(ii) *The Proposed Permit Fails to Assure Compliance with Performance Standards and Emission Limits for H₂SO₄, HCl, HF, VOC, and Total PM/PM₁₀ Established by Oak Grove's PSD Permit*

The Proposed Permit is deficient because it does not include monitoring requirements sufficient to assure compliance with the following performance standards and emission limits established by Oak Grove's PSD Permit:

| Pollutant | Performance Standard (lb/MMBtu) | Compliance Averaging Period |
|--------------------------------|--|--|
| PM/PM ₁₀ Total | 0.040 | Annual |
| VOC | 0.0045 | Annual |
| H ₂ SO ₄ | 0.0122 | Annual |
| HCl | 0.0061 | Annual |
| HF | 0.0036 | Annual |

PSD Permit, Special Condition No. 11(B).

| Emission Point No. | Source Name | Pollutant | lbs/hour | TPY |
|-------------------------------|---|--------------------------------|-----------------|------------|
| E-OGU1 | Pulverized Coal Boiler (8,970 MMBtu/hr) | PM/PM ₁₀ (Total) | 449 | 1,572 |
| | | VOC | 47 | 176 |
| | | H ₂ SO ₄ | 165 | 481 |
| | | HF | 64 | 140 |
| | | HCl | 110 | 241 |
| E-OGU2 | Pulverized Coal Boiler (8,970 MMBtu/hr) | PM/PM ₁₀ (Total) | 449 | 1,572 |
| | | VOC | 47 | 176 |
| | | H ₂ SO ₄ | 165 | 481 |
| | | HF | 64 | 140 |
| | | HCl | 110 | 241 |

PSD Permit, MAERT.

The Proposed Permit incorporates special conditions in Oak Grove's PSD Permit that direct Oak Grove to conduct annual stack-testing to determine continuous compliance with each of these emission limits and performance standards. PSD Permit, Special Condition Nos. 40(A), (B), and (D).

The Proposed Permit does not require Oak Grove to conduct additional monitoring to assure compliance with the above-listed performance standards and emission limits. The Proposed Permit is deficient because the annual stack testing it requires cannot assure ongoing compliance with the applicable requirements over any of the relevant averaging periods. A stack test is a snapshot of a unit's performance often taken under ideal circumstances that does not reflect variations

in performance over time or account for changes in performance across different operating scenarios that may arise over the course of a year. Thus, stack testing conducted once a year—by itself—cannot assure ongoing compliance with applicable performance standards and emission limits.

The PSD Permit also contains the following loophole to its stack-testing requirements that further erodes the enforceability of applicable emission limits and performance standards:

If the annual test does not establish compliance with a performance standard of Special Condition No. 11(B), the holder of this permit may conduct additional tests during the year to be averaged with the previous test(s) to demonstrate compliance; or

PSD Permit, Special Condition No. 40(A).

This loophole undermines the enforceability of applicable emission limits and performance standards by allowing Oak Grove to mask ongoing non-compliance by conducting an indefinite number of follow-up tests, the results of which would be averaged with the initial test results to demonstrate ongoing compliance with applicable requirements. For example, consider a situation where Oak Grove's pollution controls do not operate properly and the plant's main boilers regularly exceed applicable heat input-based performance standards and lb/hr mass emission limits for the first five months of a calendar year and the main boilers' emissions during this period also exceed annual limits. Though the boilers' poor performance might be reflected in emission tests conducted during that five-month period, the plant's serious non-compliance would be entirely masked if subsequent testing undertaken after performance issues had been corrected showed performance offsetting the prior extended non-compliance.

Thus, the Proposed Permit is deficient because it fails to require monitoring or testing that assures ongoing compliance with applicable performance standards and emission limits, and

because the testing that is required can be manipulated to mask serious non-compliance with applicable standards and limits.

(iii) *The Proposed Permit Fails to Assure Compliance with PM/PM₁₀ Emission Limits in Oak Grove's PSD Permit*

The Proposed Permit is deficient because it fails to specify a method for Oak Grove to monitor and quantify PM/PM₁₀ emissions from its main boilers during planned MSS activities that assures compliance with hourly and annual PM/PM₁₀ emission limits in Oak Grove's PSD Permit, which cover the units' emissions during routine operations and planned MSS activities.

According to PSD Permit, Special Condition No. 41(A):

Compliance with the lead and PM and PM₁₀ (filterable and total) emission rates in the MAERT applicable during planned MSS will be demonstrated if the recorded pressure drop across the baghouse meets manufacturer guidelines for proper operating during planned MSS.

However, neither the Proposed Permit nor the Statement of Basis include any information (1) identifying the applicable pressure drop guidelines, (2) indicating how variations in pressure across the baghouses affects the amount of PM/PM₁₀ emitted by Oak Grove's main boilers, or (3) demonstrating that maintaining baghouse pressure consistent with manufacturer guidelines ensures that PM/PM₁₀ emissions from Oak Grove's main boilers during planned MSS activities, when combined with PM/PM₁₀ emissions from the boilers during routine operation, do not exceed the applicable annual total and filterable PM/PM₁₀ limits. To assure compliance with the applicable PM/PM₁₀ emission limits, the Proposed Permit must specify a reliable method for quantifying emissions from Oak Grove's main boilers during planned MSS activities as well as routine operation.

4. Issue Raised in Public Comments

Petitioners raised these issues on pages 9-18 of their Public Comments.

5. Analysis of the State's Response

a. Permits by Rule

Petitioners demonstrated that the Proposed Permit is deficient, because it fails to specify monitoring methods that assure compliance with incorporated PBR requirements. As Petitioners explained above and in their Public Comments, many of the incorporated PBR rules fail to include any monitoring requirements, and the general recordkeeping requirements established by the Proposed Permit leaves it completely to the discretion of the operator to determine what kind of monitoring—if any—is appropriate to assure compliance with applicable limits. Public Comments at 10-11. In response to Petitioners' demonstration, the Executive Director first denies that the Proposed Permit needs to include monitoring that assures compliance with each PBR held by Oak Grove and then suggests that recordkeeping and reporting requirements in the Proposed Permit are a viable substitute for monitoring. Response to Comments at 19.

The Executive Director's flat contention that the Proposed Permit needn't include monitoring methods that assure compliance with each PBR claimed by Oak Grove is incorrect. The Executive Director "does not have the discretion to issue a permit without specifying the monitoring methodology needed to assure compliance with applicable requirements in the title V permit." *Wheelabrator Order* at 10; *see also*, 40 C.F.R. § 70.6(a)(3)(i).

While Petitioners agree with the Executive Director that "a combination of monitoring, recordkeeping, and reporting requirements (and not [a] monitoring requirement itself) are used to assure compliance with applicable state and federal regulations and terms and conditions of the permit," this fact has no bearing on the question of whether monitoring, recordkeeping, and reporting requirements in the Proposed Permit assure compliance with PBRs claimed by Oak Grove. Response to Comments at 19. The Executive Director has not identified any specific

monitoring or recordkeeping requirement(s) that assures compliance with each of the PBRs claimed by Oak Grove. Accordingly, the Proposed Permit is deficient. 40 C.F.R. § 70.6(a)(3)(i).

While the Proposed Permit, Special Condition No. 13 does require Oak Grove to maintain records to demonstrate compliance with PBRs, the language of this condition does not identify any specific kind of records that Oak Grove must maintain to demonstrate compliance with any particular PBR requirement and leaves it completely to Oak Grove's discretion to decide how compliance with PBR requirements should be demonstrated. Public Comments 10-11. Thus, the Proposed Permit fails to establish specific monitoring and recordkeeping requirements sufficient to assure compliance with each PBR claimed by Oak Grove. *Granite City I Order* at 7-8 (finding that state agency failed to explain how recordkeeping and pollution control inspection requirements, in the absence of any actual monitoring requirements, would assure compliance with applicable PM limits and yield reliable data representative of compliance with the permit).

b. Oak Grove's PSD Permit

(i) *Opacity Limits for Oak Grove's Main Boilers*

PSD Permit, Special Condition No. 35 states that, after the initial demonstration of compliance, "CEMS shall be used to determine continuous compliance with the opacity limitations in Special Condition Nos. 3 and 10," and that "[c]ompliance with the PM mass emission limit will be considered to demonstrate compliance with the opacity limit[.]" Petitioners argue that compliance with the PM mass emission limit—which applies over a 3-hour averaging period—is not sufficient to assure compliance with the permit's opacity limit, which applies over a much shorter six-minute averaging period. Public Comments at 12. The Executive Director does not address Petitioners' concern about averaging periods. Instead, the Executive Director responds that Petitioners have misunderstood the relationship between opacity and PM emissions:

Commenter's assertion regarding demonstration of compliance with [the] opacity limit being directly linked with demonstration of compliance with "a three-hour average filterable PM limit" appears to be misplaced since the relationship between opacity and PM mass emissions can vary significantly with the PM particle size distribution and refractive index of the PM particles in the flue gas. PM entrained in flue gas is produced by the combustion of fuels or wastes. The size and quantity of particles released typically depends on the type of fuel and the design of the plant. Opacity measurements are dependent on particle size, composition, shape, color, and refractive index. These properties may change with fuel type and process conditions. Therefore, as state in the Proposed Permit, Appendix B at page 83, Major NSR Summary Table . . . , "Opacity is used as an indicator of PM emissions but the opacity limits in the permit are not directly correlated to the PM limit in the MAERT; therefore, non-compliance with the opacity limit does not constitute non-compliance with the PM limit."

Response to Comments at 22.

This response supports rather than rebuts Petitioners' claim. If it is true, as the Executive Director claims, that Oak Grove can comply with the filterable PM limit while violating its opacity limit, then compliance with the filterable PM limit is not a reliable measure of compliance with the opacity limit. The Executive Director's response should be sufficient, by itself, to compel the Administrator to object.

The Executive Director also attempts to undermine Petitioners' claim that a demonstration of compliance with the applicable filterable PM limit is sufficient to demonstrate compliance with the PSD Permit's opacity limit by listing various special conditions in Oak Grove's PSD permit that contain monitoring methods for various limits and units at the power plant. *Id.* These special conditions, however, do not overcome the clear language of the PSD Permit that "[c]ompliance with the PM mass emission limit will be considered to demonstrate compliance with the opacity limit." PSD Permit, Special Condition No. 35.

The Executive Director failed to address Petitioners' claim that the different averaging periods for opacity limits and filterable PM limits in Oak Grove's PSD Permit made compliance with the filterable PM limit an unreliable indicator of compliance with the opacity limit. Instead, he provided additional support for Petitioners' claim that the Proposed Permit is deficient, because compliance with a PM mass emission standard is not a reliable indicator of compliance with an opacity limit. Accordingly, the Executive Director failed to rebut Petitioners' demonstration that the Proposed Permit is deficient and the Administrator must object.

(ii) *Performance Standards and Limits for H₂SO₄, HCl, HF, VOC, and Total PM/PM₁₀ Emitted by Oak Grove's Main Boilers*

Petitioners demonstrated that the Proposed Permit is deficient because it fails to assure compliance with heat input-based performance standards and mass emission limits established for the power plant's main boilers by Oak Grove's PSD Permit. This demonstration turned on two arguments: (1) the stack testing required by the Proposed Permit is too infrequent to provide a representative indication of the power plant's performance over the relevant averaging periods; and (2) the PSD Permit's provision allowing Oak Grove to average the results from multiple tests to demonstrate compliance with applicable limits allows Oak Grove to mask serious non-compliance with applicable performance standards and emission limits.

The Executive Director does not acknowledge or dispute Petitioners' claims regarding the sufficiency of the stack testing provisions incorporated by reference into the Proposed Permit. Instead he (1) claims that concerns the "validity" of monitoring required by Oak Grove's PSD Permit is beyond the scope of this Title V permitting project; (2) lists the numbered special conditions in Oak Grove's PSD Permit that he believes contain monitoring, recordkeeping, and reporting requirements for the performance standards and limits; and (3) contends that the

Proposed Permit's requirement that Oak Grove certify compliance with applicable requirements assures compliance with all such requirements. Response to Comments at 27.

Petitioners' Demonstration that Monitoring Provisions in Oak Grove's PSD Permit Fail to Assure Compliance is Not Beyond the Scope of this Title V Permitting Project

With respect to Petitioners' alleged attack on the validity of monitoring requirements in Oak Grove's PSD Permit, the Executive Director states:

Permit No. 76474/PSDTX1056 issued in 2007 in accordance with approved Texas SIP incorporates annual stack testing related requirements stated in Special Condition 40A. This Draft Permit or Permit No. 76474/PSDTX1056 issued 03/12/2015 do not encompass any changes to the annual stack testing requirements from the NSR project approved in 2007 are beyond the scope of this Title V review process.

Id. at 27.

Petitioners, however, have not disputed that Oak Grove's PSD Permit was issued pursuant to Texas's SIP approved rules. Nor did Petitioners claim that the stack testing requirement in Oak Grove's PSD Permit is not "valid" under Texas's preconstruction permitting rules. Instead, Petitioners presume that the PSD Permit's stack testing requirements are valid, but contend that these requirements fail to satisfy Title V because they do not assure compliance with applicable emission limits. Public Comments at 13-16.

Each Title V permit must include monitoring conditions necessary to assure compliance with all applicable requirements. 42 U.S.C. § 7661c(a) and (c); 40 C.F.R. § 70.6(c). Emission limits and operating requirements established by preconstruction permits are "applicable requirements" for purposes of Title V review. 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2)(H). The Clean Air Act requires the Administrator to object to any Title V permit that does not include monitoring sufficient to assure ongoing compliance with all applicable requirements. 42 U.S.C. § 7661d(b). Accordingly, Petitioners have raised a valid Title V claim

and the Executive Director's contention that this claim is beyond the scope of the Oak Grove Title V permit project is incorrect.

Monitoring, Recordkeeping, and Reporting Requirements in Oak Grove's PSD Permit do Not Rebut Petitioners' Demonstration that the Proposed Permit is Deficient

Next, the Executive Director lists the various monitoring, recordkeeping, and reporting requirements in Oak Grove's PSD Permit that Oak Grove must follow to demonstrate compliance with applicable emission limits and performance standards. Response to Comments at 27. The Executive Director, however, does not explain *how* these requirements—identified merely by citation to various numbered special conditions—assure compliance with the applicable emission limits and performance standards. As explained below, the special conditions cited by the Executive Director fail to save the Proposed Permit.

The Executive Director's response identifies four relevant monitoring and testing special conditions in Oak Grove's PSD Permit: 32, 33, 40, and 41. *Id.* Special Condition Nos. 32 and 33 establish stack testing requirements for Oak Grove's initial demonstration of compliance. After Oak Grove's initial demonstration of compliance, Special Condition Nos. 40 and 41 establish stack testing requirements for Oak Grove's demonstration of ongoing compliance with applicable emission limits and performance standards. As Petitioners explained in their Public Comments and explain again in this Petition, Special Condition Nos. 40 and 41 fail to assure ongoing compliance with applicable emission limits and performance standards after the initial demonstration of compliance, because (1) a single stack test each year is not sufficient to assure compliance with applicable limits and performance standards across any of the relevant averaging periods; and (2) the provision in Special Condition No. 40(A)(1) allows Oak Grove to average the results of an unspecified number of stack tests to mask non-compliance with applicable emission limits and performance standards.

In addition to the stack testing requirements established by Oak Grove's PSD Permit, the Executive Director identifies the following special conditions as relevant to Oak Grove's compliance demonstrations: 16, 44, and 45. These special conditions do not rebut Petitioners' demonstration that the Proposed Permit is deficient.

Special Condition No. 16 requires Oak Grove to comply with a written MSS Plan (that is not attached to the Proposed Permit). This special condition does not establish any monitoring, recordkeeping, or reporting requirements that assure ongoing compliance with applicable emission limits or performance standards.

Special Condition No. 44 requires Oak Grove to keep the following records at the power plant for the life of the plant: (1) a copy of the PSD Permit; (2) the permit application submitted July 27, 2005, and "subsequent representations submitted to the TCEQ;" and (3) a complete copy of reports and records of testing for the initial stack testing required by Special Condition Nos. 32 and 33. Nothing in Special Condition No. 44 addresses Petitioners' demonstration that stack testing required by Special Condition Nos. 40 and 41 fail to assure ongoing compliance with applicable emission limits and performance standards.

Finally, Special Condition No. 45 lists various records Oak Grove must keep for five years after collection. This special condition covers records for many different monitoring and testing provisions in the PSD Permit, including stack testing conducted to establish ongoing compliance with emission limits and performance standards. The requirement to maintain records of relevant stack tests, however, has no bearing on Petitioners' demonstration that (1) the stack testing required by the permit is too infrequent to assure compliance with applicable emission limits and performance standards; and (2) the stack testing requirements allow Oak Grove to mask

noncompliance with emission limits and performance standards by averaging the results of an indefinite number of tests.

The Proposed Permit's Compliance Certification Requirement Does Not Assure Ongoing Compliance with Applicable Emission Limits and Performance Standards

The Executive Director contends:

Proposed Permit at page 12, Special Term and Condition 15, assures compliance with all applicable requirements by means of the Permit Compliance Certification (PCC) Form (TCEQ 10490). The form is used to certify that the Applicant was in compliance with the requirements of the operating permit, and to indicate if any indications of non-compliance, or deviations, had occurred during the certification period.

Response to Comments at 27.

The Executive Director, however, does not explain how certification of compliance with permit requirements assures ongoing compliance with applicable emission limits and performance standards if the method established by the permit to determine compliance with such requirements is deficient. The Proposed Permit's compliance certification requirement cannot assure ongoing compliance with applicable emission limits and performance standards in Oak Grove's PSD Permit, because the stack testing the permit directs Oak Grove to conduct to demonstrate compliance with such requirements does not assure compliance.

(iii) PM/PM₁₀ Limits for Oak Groves Main Boilers

Petitioners demonstrated that the Proposed Permit's failure to specify how Oak Grove should quantify PM/PM₁₀ emissions during planned MSS activities authorized by its PSD Permit undermines the enforceability of the permit's PM/PM₁₀ emission limits, which apply to emissions during routine operation and planned MSS activities. Petitioners also demonstrated that the project record for the Proposed Permit fails to explain how parametric monitoring requirements for

planned MSS activities authorized by Oak Grove's PSD Permit assure compliance with applicable hourly and annual PM/PM₁₀ emission limits. Public Comments at 16-17.

The Executive Director responds to this demonstration in the same manner he responded to Petitioners' demonstration concerning the Proposed Permit's failure to specify monitoring requirements that assure ongoing compliance with emission limits and performance standards in Oak Grove's PSD Permit: He argues that Petitioners' monitoring issue is beyond the scope of this Title V permitting project, lists the applicable monitoring, recordkeeping, and reporting requirements in the PSD Permit, and states that the Proposed Permit's compliance certification requirement assures compliance with the PM/PM₁₀ limits. Response to Comments at 29.

The Executive Director's response fails to rebut Petitioners' demonstration, because (1) (as explained above) Petitioners public comments concerning the sufficiency of monitoring required by Oak Grove's PSD Permit squarely raise a live Title V issue; (2) none of the special conditions listed in the Executive Director's response require Oak Grove to quantify PM/PM₁₀ emissions during planned MSS activities and the Executive Director has not explained how the listed special conditions assure compliance with the applicable limits; and (3) the compliance certification requirement does not assure compliance with applicable requirements, unless the Proposed Permit contains monitoring requirements that are sufficient to assure ongoing compliance. Thus, the Executive Director failed to rebut Petitioners' demonstration that the Proposed Permit is deficient and the Administrator must object to it.

V. CONCLUSION

For the foregoing reasons, and as explained in Petitioners' timely-filed public comments, the Proposed Permit is deficient. The Executive Director's Response to Comments also failed to

address Petitioners' significant comments. Accordingly, the Clean Air Act and EPA's 40 C.F.R. Part 70 rules require that the Administrator object to the Proposed Permit.

Sincerely,

/s/ Gabriel Clark-Leach
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